

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT APPEAL No. 169 of 2006

Between:

Shaik Abdul Shukur and another .. Appellants

AND

Janab Sk.Abdul Saleem and others ..Respondents.

Counsel for the Appellants: Mr.E.Ayyapu Reddy

Counsel for Respondent No.1. Sri V.S.R.Anjaneyulu

Counsel for Respondent No.2. Sri A.M.Qureshi

Counsel for Respondent No.3. The Govt. Pleader for Revenue

Counsel for Respondent No.4. Sri S.M.Subhani, Standing

Counsel for A.P. Wakf Board.

Counsel for Respondent No.5 and 6. Sri V.Venkataramana.

Dated: February 17, 2006

JUDGMENT:

Per G.S.Singhvi, C.J.

The rules of natural justice are multi dimensional and multi-faceted. One of these rules is that every judicial and quasi-judicial authority and even administrative authority entrusted with the task of deciding lis between the parties or passing order which may adversely affect some person, must not only record the reasons but also communicate the same to the affected person. The requirement of recording of reasons and communication has been treated

as an integral part of the concept of natural justice and has been highlighted in a series of the judgments of Supreme Court, some of which are: **Harinagar Sugar Mills v. Shyam Sundar M.P. Industries Limited v. Union of India**, **Bhagat Raja v. Union of India**, **Mahavir Prasad Santoshkumar v. State of U.P.**, **Travancore Rayons v. UOI**, **Messrs Ajanta Industries v. Central Board of Direct Taxes, New Delhi**, **Messrs Siemens Engineering & Manufacturing Company v. Union of India**, **S.N.Mukherjee v. Union of India**, **Cyril Lasrado vs. Juliana Maria Lasrado**, **State of Orissa vs. Dhaniram Luhar**, **State of Rajasthan vs. Sohan Lal**, **Mangalore Ganesh Beedi Works vs. C.I.T.** and **Manorama Sachan vs. Lucknow Development Authority** etc.

In **S.N. Mukherjee's** case (supra), the Constitution Bench of the Supreme Court after a detailed survey of English, American and Australian law on the subject and making reference to various judicial precedents, laid down the following proposition:

“The object underlying the rules of natural justice “to prevent miscarriage of justice” and secure “fair play in action.” As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the

requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.”

In **Cyril Lasrado Vs. Juliana Maria Lasrado** (supra), the Supreme Court reiterated the necessity of recording of reasons in the following words:

“Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The 'inscrutable face of the sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance.”

“Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgement not sustainable.”

In **State of Orissa vs. Dhaniram Luhar** (supra) and **State of Rajasthan vs. Sohan Lal** (supra), the Supreme Court considered the question whether a petition for leave to appeal filed under Section 378(3) of the Code of Criminal Procedure could be dismissed by the High Court without assigning reasons and answered the same in the negative. In **Sohanlal's** case (supra), the Supreme Court laid down the following propositions:

“The Hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice.”

“The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know of the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind. All the more so, when refusal of leave to appeal has the effect of foreclosing once and for all a scope for scrutiny of the judgment of the trial court even at the instance and hands of the first appellate court.”

“The Supreme Court in *Dhaniram Luhar* case, (2004) 5 SCC 568, while reiterating the view expressed in the earlier cases for the past two decades emphasised the necessity, duty and obligation of the High Court to record reasons in disposing of appeals arising under Section 378 Cr.P.C, 1973. The fact that the entertaining of an appeal at the instance of the State against an order of acquittal for an effective consideration of the same on merits is made subject to the preliminary exercise of obtaining of leave to appeal from the High Court, is no reason to consider it as an appeal of any inferior quality or grade, when it has been specifically and statutorily provided for, or sufficient to obviate and dispense with the obvious necessity to record reasons. The need for recording reasons for the conclusion arrived at by the High Court under Section 378 has nothing to do with the fact that the appeal envisaged under Section 378 has nothing to do with the fact that the appeal envisaged under Section 378 Cr.P.C is conditioned upon the seeking for an obtaining of leave from the court.”

In ***Mangalore Ganesh Beedi Works v. C.I.T*** (supra), the Supreme Court held that even the appellate order passed under Sections 260A and 260B of Income Tax Act, 1961 must satisfy the requirement of a speaking order and observed:

“In an order of affirmation, repetition of reasons elaborately may not be necessary. But even then the arguments advanced and the points urged have to be dealt with. Reasons for affirmation have to be indicated, though in appropriate cases they may be briefly stated.”

“Recording of reasons is a part of fair procedure. Reasons are harbinger between the mind of maker of the decision in the controversy and the decision or conclusion arrived at. They substitute subjectivity with objectivity. Therefore, the matter is remitted to the High Court to consider the relevant points afresh.”

In ***Testeels Limited v. N.M.Desai, Conciliation Officer and another*** a Full Bench of Gujarat High Court speaking through Sri P.N.Bhagwati, J (as His Lordship then was) made a lucid analysis of the law on the subject and laid down the following principles:

“There are two strong and cogent reasons why we must insist that every quasi-judicial order must disclose reasons in support of it. The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of our constitutional set-up.

Our Constitution posits a welfare State in which every citizen must have justice—social, economic and political and in order to achieve the ideal of welfare State, the State has to perform several functions involving acts of interferences with the free and unrestricted exercise of private rights. The State is called upon to regulate and control the social and economic life of the citizen in order to establish socio-economic justice and remove the existing imbalance in the socio-economic structure. The State has, therefore, necessarily to entrust diverse functions to administrative authorities which involve making of orders and decisions and performance of acts affecting the rights of individual members of the public. In exercise of some these functions, the administrative authorities are required to act judicially. Now what is involved in a judicial process is well settled and as pointed out by Shah J. in *Jaswant Sugar Mills's case*, AIR 1963 SC 677 *supra*, a quasi-judicial decision involves the following three elements:

1. It is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules;
2. It declares rights or imposes upon parties obligations affecting their civil rights; and
3. The investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of material if a dispute be on question of fact, and if the dispute be on question of law, on the presentation, of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.

Another reason of equal cogency which weighs with us in spelling out the necessity for giving reasons is based on the power of judicial review which is possessed by the High Court under Article 226 and the Supreme Court under Article 32. The High Court under Article 226 and the Supreme Court under Article 32 have the power to quash by certiorari a quasi-judicial order made by an administrative officer and this power of review exercisable by issue of certiorari can be effectively exercised only if the order is a speaking order and reasons are given in support of it. If no reasons are given, it would not be possible for the High Court or the Supreme Court exercising its power of judicial review to examine whether the administrative officer has made any error of law in making the order. It would be the easiest thing for an administrative officer to avoid judicial scrutiny and correction by omitting to give reasons in support of his order. The High Court and the Supreme Court would be

powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. The power of judicial review is a necessary concomitant of the rule of law and if judicial review is to be made an effective instrument for maintenance of the rule of law, it is necessary that administrative officers discharging quasi-judicial functions must be required to give reasons in support of their orders so that they can be subject to judicial scrutiny and correction.”

We have prefaced the disposal of the writ appeal filed by Sri Shaik Abdul Shukur and Shaik Rasool by noticing the principle of law and making reference to some of the judicial precedents because after perusing the record and hearing learned counsel for the parties we are satisfied that order dated 05-12-2005 passed by the learned Single Judge in Writ Petition No.11149 of 2005 whereby she quashed order dated 7-5-2005 passed by Andhra Pradesh State Wakf Board (for short ‘the Board’) does not suffer from any legal infirmity.

District Wakf Committee for Krishna District was constituted by the Board vide proceedings bearing No.B3/14/KST/DWC/94 dated 23.2.2004 issued under Section 18 of the Wakf Act, 1995 (for short ‘the Act’). The Committee consisted of 14 members and its tenure was for two years. Respondent No.1 Janab Sk. Abdul Saleem was appointed as President of the District Committee. After about one year, the Board issued notice dated 17.3.2005 to the District Committee to show cause as to why it may not be dissolved. Respondent No.1 filed reply dated March 11, 2005 to contest the show cause notice. In terms of sub-section (2) of Section 67, the Board was required to record reasons in writing for dissolving the committee, but in utter contempt and disregard to the mandate of the statute, the Board passed order dated May 7, 2005, the relevant portion of which is extracted below:

“The District Wakf Committee Krishna District was constituted in the reference 1st read above for a period of 2 years.

On receipt of complaints in the reference 2nd read above against the President of District Wakf Committee, a show cause notice was issued in the reference 5th read above for which the President submitted his explanation in the reference 6th read above which has been examined and found not satisfactory.

As such the District Wakf Committee constituted in the reference 1st read above is dissolved with immediate effect.”

Respondent No.1 challenged the aforementioned order in Writ Petition No.11149 of 2005. Notice of the writ petition was served on the Board but no counter was filed on its behalf. The appellants and three others, who were impleaded as parties in pursuance of order dated 1.9.2005 passed in W.P.M.P. Nos.15487 and 15601 of 2005, filed separate affidavits to contest the writ petition. They averred that pursuant to order dated 7.5.2005, a new committee had been constituted and the same had taken over charge on 9.5.2005.

On the basis of pleadings of the parties, the learned Single Judge formulated the following questions:

“1. Whether the impugned order, which is apparently cryptic and lacks reasons, is in violation of the fundamental principles of natural justice and liable to be set aside on that ground?

2. Whether the petitioner can maintain the Writ Petition under Article 226 of the Constitution of India without exhausting the alternative remedy of appeal available under the Wakf Act?”

After hearing learned counsel for the parties, the learned Single Judge answered both the questions in favour of the writ petitioner (Respondent No.1 herein) and quashed order dated 7.5.2005 by holding that the same is not in consonance with the mandate of Section 67(2) of the Act and is also violative of the rules of natural justice. The learned Single Judge over-ruled the objection of alternative remedy raised on behalf of the appellant by observing that the order under challenge had been passed by the Board in violation of the rules of natural justice and, in such a case, the High Court can directly entertain the writ petition.

Sri E.Ayyapu Reddy, learned senior counsel appearing for the appellants argued that the view taken by the learned Single Judge on the issue of availability of alternative remedy is contrary to the settled legal position and,

therefore, the order passed by her is liable to be set aside. He then argued that the non-impleadment of the reconstituted District Committee was fatal to the maintainability of the writ petition, but this aspect has been altogether overlooked by the learned Single Judge while granting relief to respondent No.1. The third contention of the learned counsel is that even if the learned Single Judge came to the conclusion that order dated May 7, 2005 was vitiated for violation of rules of natural justice, she should not have restored the committee headed by the writ petitioner because the allegations levelled against the committee were very serious and, in any case, the term of the committee is going to end on February 22, 2006.

Sri V.S.R. Anjaneyulu, learned counsel for respondent No.1 submitted that the District Committee headed by respondent No.1 continued to function throughout the pendency of the writ petition because of an interim order passed by the Court and, therefore, the order passed by the learned Single Judge may not be upset simply because the term of the committee is going to an end by February 22, 2006. He then argued that order dated May 7, 2005 passed by the Board was *per se* contrary to the mandate of sub-section (2) of Section 67 of the Act and, therefore, the learned Single Judge did not commit any error in quashing the same.

In our opinion, the order of the learned Single Judge does not suffer from any legal infirmity. Section 67 of the Act which provides for supervision and supersession of Committee of management reads as under:

“67. Supervision and supersession of committee of management:

(1) Whenever the supervision or management of a wakf is vested in any committee appointed by the wakf, then, notwithstanding anything contained in this Act, such committee shall continue to function until it is superseded by the Board or until the expiry of its term as may be specified by the wakf, whichever is earlier:

Provided that such committee shall function under the direction, control and supervision of the Board and abide by such directions as the Board may issue from time to time:

Provided further that if the Board is satisfied that any scheme for the management of a wakf by a committee is inconsistent with any provision of this Act or of any rule made thereunder or with the directions

of the wakf, it may, at any time, modify the scheme in such manner as may be necessary to bring it in conformity with the directions of the wakf or of the provisions of this Act and the rules made thereunder.

(2) Notwithstanding anything contained in this Act and in the deed of the wakf, the Board may, if it is satisfied, for reasons to be recorded in writing, that a committee, referred to in sub-section (1) is not functioning properly and satisfactorily, or that the wakf is being mismanaged and that in the interest of its proper management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the wakf, insofar as it relates to the constitution of the committee, shall cease to have any force:

Provided that the Board shall, before making any order superseding any committee, issue a notice setting forth therein the reasons for the proposed action and calling upon the committee to show cause within such time, not being less than one month, as may be specified in the notice, as to why such action shall not be taken.

(3) Every order made by the Board under sub-section (2) shall be published in the prescribed manner and on such publication shall be binding on the mutawalli and all persons having any interest in the wakf.

(4) Any order made by the Board under sub-section (2) shall be final:

Provided that any person aggrieved by the order made under sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal:

Provided further that the Tribunal shall have no power to suspend the operation of the order made by the Board pending such appeal.

(5) The Board shall, whenever it supersedes any committee under sub-section (2), constitute a new committee of management simultaneously with the order made by it under sub-section (2).

(6)

Provided

Provided"

A reading of the above reproduced provision makes it clear that whenever the supervision or management of a wakf is entrusted to any committee, then such committee shall continue to function till its term expires. The committee is required to function under the direct control and supervision of the Board and is bound by the directions given by the Board. Sub-section (2) of Section 67 which begins with a non obstante clause empowers the Board to supercede the committee if it is satisfied that the committee is not functioning properly and satisfactorily or is being mismanaged. The exercise of this power is subject to the condition that the Board must record reasons in writing indicating its satisfaction on the issue of improper or unsatisfactory functioning of the committee or its mismanagement. This necessarily means that an order made by the Board under Section 67 (2) without recording reasons is liable to be declared as violative of the mandate of the statute.

We are further of the view that even if sub-section (2) of Section 67 did not contain an express requirement of recording of reasons and communication thereof, the Court would have read that requirement as implicit in the exercise of power to supercede/dissolve the Committee – **Bhagat Raja v. Union of India** (supra) and **S.N. Mukherjee v. Union of India** (supra).

The argument of Sri E. Ayyapu Reddy that the learned Single Judge should not have entertained the writ petition and should have relegated the writ petitioner to the alternative remedy of appeal under Section 67 (4) sounds attractive, but cannot be accepted because while laying down the rule of alternative remedy, the superior courts have carved out some exceptions including the one that the High Court may directly entertain the petition if the action complained of is vitiated due to violation of the rules of natural justice. In **Baburam v. Zilla Parishad** the Supreme Court reiterated the rule of alternative remedy in the following words:

“When an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal

remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the Court may therefore in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted.”

Their Lordships then carved out the following two exceptions to the rule of alternative remedy:

1. where proceedings are taken before a Tribunal under a provision of law, which is ultra vires to the Constitution,
2. where the impugned order has been made in violation of the rules of natural justice.

In **Harbanslal Sahnia v. Indian Oil Corporation Ltd.**, the Supreme Court considered the situations in which the High Court can exercise power under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

“The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: *i*) where the writ petition seeks enforcement of any of the fundamental rights; *(ii)* where there is failure of principles of natural justice; or *(iii)* where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See ***Whirlpool Corpn. v. Registrar of Trade Marks*** {(1998) 8 SCC 1}. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners’ dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.”

By applying the ratio of the aforementioned judgments to the facts of this

case, we hold that the learned Single Judge did not commit any error by entertaining the writ petition despite the availability of alternative remedy of appeal. We further hold that the learned Single Judge rightly quashed order dated 7-5-2005 because the same was passed in violation of Section 67 (2) and the rules of natural justice.

The objection of the learned counsel for the appellants that the petition suffers from non-joinder of parties also merits rejection because we find that during the pendency of the writ petition, the appellants claiming themselves to be the President and members of the District Wakf Committee had got themselves impleaded in representative capacity and effectively contested the writ petition.

We are also not inclined to non-suit respondent No.1 on the ground that the term of the committee would be ending on February 22, 2006. In our view, any such short cut by the Court would amount to conferring legitimacy on a patently illegal and arbitrary action taken by the Board.

For the reasons mentioned above, the appeal is dismissed. However, it is made clear that order passed by the learned Single Judge and the one passed by us shall not preclude the Board from passing fresh order in accordance with law.

G.S.SINGHVI, C.J.

February 17, 2006

G.BHAVANI PRASAD, J.

GRR/vtv / svs